



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TX 75202-2733

July 24, 2012

CERTIFIED MAIL -RETURN RECEIPT REQUESTED 70080150000315437572

David C. Keith
Anchor QEA, LLC
614 Magnolia Avenue
Ocean Springs, MS 39564

RE: Noncompliance with Administrative Settlement Agreement and Order on Consent for Removal Action, U.S. EPA Region 6, CERCLA Docket No. 06-12-10 ("AOC" or "Order")) between the United States Environmental Protection Agency ("EPA") and McGinnes Industrial Maintenance Corporation and International Paper Company ("Respondents"), for the San Jacinto River Waste Pits Site ("Site")

Dear Mr. Keith:

This letter and the enclosed chart are intended to encourage discussion between EPA and the Respondents regarding work at the San Jacinto River Waste Pits Superfund Site. In prior letters to you, the EPA has identified multiple potential violations of the above-referenced Order that are a result of work tasks not completed by Respondents on or before the due dates in the EPA-approved schedule for performance of the removal action. The Respondents, however, raised some concerns in their September 9, 2011 submission regarding these potential violations that EPA believes warrant further clarification and discussion. In addition to discussing the potential violations of the removal Order, the EPA also would like to meet with Respondents to discuss ways to prevent any future issues and to work more cooperatively and effectively in future at the Site.

A list of potential violations of the AOC, together with a summary of the basis for the violations, was sent to Respondents in August 2011, with an additional violation identified in EPA's letter to Respondents dated May 22, 2012. This letter and the enclosed, updated chart of potential violations are for discussion and information purposes only; they are not an assessment of stipulated penalties under the Order. Please be advised that Respondents' invocation of any dispute resolution process with respect to this letter and chart, as well as prior notice of violation letters, is premature until such time as the EPA seeks to assess stipulated penalties, i.e., makes a formal demand on Respondents for a specified stipulated penalty amount.

After reviewing the potential violations, the EPA has made modifications, reflected in the enclosed chart, to the duration of all violations regarding performance of removal actions other than submission of reports. These potential violations were identified pursuant to Paragraph 76(b) of the Order, which lists as a Compliance Milestone, "TCRA Implementation (start of on-site construction activities)," with the due dates for the initiation of construction activities specified in the December 15, 2010, EPA-approved final Work Schedule. Please note that the EPA has modified the description and duration of these potential violations to reflect late completion of

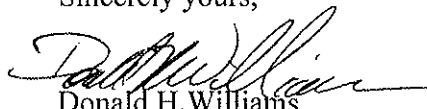
initiation of the activities (rather than late completion of the entire activity) to better reflect the parties' agreement as documented in Paragraph 76 of the Order.

Also please note that, regarding the three removal work plans identified in the enclosed chart, the EPA believes imposition of stipulated penalties is authorized pursuant to Paragraph 77 of the Order, which provides for penalties in lower amounts than those listed in the chart "for failure to submit timely or adequate reports or other written documents" not specifically listed in Paragraph 76. In addition, the daily stipulated penalty amounts listed at the top of the chart do not apply to the last identified violation, the Respondents' refusal to incorporate requested EPA revisions into the Removal Action Completion Report. The EPA sent the final RACR, as completed by EPA, to Respondents on May 22, 2012, and, accordingly, Paragraph 78 of the Order authorizes imposition of a stipulated penalty in the amount of \$50,000 because EPA was forced to take over this portion of the Work. This potential violation is particularly troublesome given the ongoing work on the Remedial Investigation/Feasibility Study, which requires Respondents to be responsive to EPA comments while preparing the final reports that will document the Site investigation and the evaluation of remedial options.

The EPA would like to invite Respondents to our office in Dallas to discuss this matter. I am available between July 30 and August 9. In preparing for a meeting, please also be advised that the EPA will not discuss Respondents' claims of *force majeure* related to access to the Big Star and TXDOT properties, already denied by EPA in its letter dated February 16, 2011, for the reasons stated in that letter; in any event, the Respondents have provided sufficient information regarding this issue in the September 2011 submission reviewed by EPA. The purposes of the meeting requested at this time are to discuss other information and concerns identified by the Respondents regarding the potential violations and to attempt to identify a more cooperative path forward to resolving the issues posed by the Site.

If you have any questions concerning this matter and to schedule a meeting, please contact Anne Foster at 214-665-2169 or Jessica Hernandez at 214-665-8384.

Sincerely yours,



Donald H. Williams
Acting Associate Director
Technical and Enforcement Branch

Enclosure

cc: John Cermak
Albert Axe

| <u>Scheduled Task</u> | <u>Scheduled Completion</u> | <u>Actual Completion</u> | <u>\$1,000 Stipulated Penalty per day</u> | <u>\$2,500 Stipulated Penalty per day</u> | <u>\$5,000 Stipulated Penalty per day</u> |
|--|------------------------------------|---------------------------------|--|--|--|
| Initiation of Materials Delivery - Natural Stone | 12/16/10 | 2/01/11 | 12/17/10-12/30/10 (14 days) | 12/31/10-1/15/11 (16 days) | 1/16/11-2/1/11 (17 days) |
| Initiation of Materials Delivery - Processed Concrete | 12/16/10 | 2/01/11 | 12/17/10-12/30/10 (14 days) | 12/31/10-1/15/11 (16 days) | 1/16/11-2/1/11 (17 days) |
| Initiation of Materials Delivery - Filter Fabric | 12/27/10 | 2/01/11 | 12/28/11-1/10/11 (14 days) | 1/11/11 – 1/26/11 (16 days) | 1/27/11-2/1/11 (6 days) |
| Initiation of Materials Delivery - LLDPE | 12/27/10 | 2/01/11 | 12/28/11-1/10/11 (14 days) | 1/11/11 – 1/26/11 (16 days) | 1/27/11-2/1/11 (6 days) |
| Plans and Submittals Preparation Project Work Plan* | 12/10/10 | 2/4/11 | 12/11/10-12/24/10 (14 days)* | 12/25/10-1/9/11 (16 days)* | 1/10/11-2/4/11 (26 days)* |
| Plans and Submittals Preparation Site Specific HASP* | 12/10/10 | 2/2/11 | 12/11/10-12/24/10 (14 days)* | 12/25/10-1/9/11 (16 days)* | 1/10/11-2/2/11 (24 days)* |
| Plans and Submittals Preparation QAPP* | 12/10/10 | 2/4/11 | 12/11/10-12/24/10 (14 days)* | 12/25/10-1/9/11 (16 days)* | 1/10/11-2/4/11 (26 days)* |
| Initiation of Access Road Construction - Clear & Grub | 12/30/10 | 2/01/11 | 12/31/10-1/13/11 (14 days) | 1/14/11-1/29/11 (16 days) | 1/30/11-2/1/11 (3 days) |
| Initiation of Access Road Construction - Place Filter Fabric & Road Base | 1/04/11 | 2/01/11 | 1/05/11-1/18/11 (14 days) | 1/19/11-2/1/11 (14 days) | Not Applicable |
| Initiation of Environmental Protection | 12/27/10 | 2/01/11 | 12/28/11-1/10/11 (14 days) | 1/11/11 – 1/26/11 (16 days) | 1/27/11-2/1/11 (6 days) |
| Initiation of Water Side Placement Armor Cap C2 (renamed Armor Cap C in 3/3/11 revised Removal Work Plan) | 1/5/11 | 3/16/11 | 1/6/11-1/19/11 (14 days) | 1/20/11-2/4/11 (16 days) | 2/5/11-3/16/11 (40 days) |
| Initiation of Water Side Placement Armor Cap B (renamed | 1/24/11 | 3/18/11 | 1/25/11-2/7/11 (14 days) | 2/8/11-2/23/11 (16 days) | 2/24/11-3/18/11 (23 days) |

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|---|---------|---------|------------------------------|------------------------------|------------------------------|
| Armor Cap B/C in 3/3/11 revised Removal Work Plan) | | | | | |
| Initiation of Water Side Placement Armor Cap E (renamed Armor Cap D(24) in 3/3/11 revised Removal Work Plan) | 2/8/11 | 2/17/11 | 2/9/11-2/17/11 (9 days) | | |
| Initiation of Water Side Placement - Place Geotextile | 1/5/11 | 2/17/11 | 1/6/11-1/19/11 (14 days) | 1/20/11-2/4/11 (16 days) | 2/5/11-2/17/11 (13 days) |
| Initiation of Land Side Placement - Western Cell Preparation Clear & Grub Peninsula | 1/21/11 | 3/17/11 | 1/22/11-2/4/11 (14 days) | 2/5/11-2/20/11 (16 days) | 2/21/11-3/17/11 (25 days) |
| Initiation of Land Side Placement – Western Cell Preparation Shaping & Grading | 1/31/11 | 4/5/11 | 2/1/11-2/14/11 (14 days) | 2/15/11-3/2/11 (16 days) | 3/3/11-4/5/11 (34 days) |
| Initiation of Land Side Placement - Western Cell Preparation Granular Fill (bedding) | 2/1/11 | 5/18/11 | 2/2/11-2/15/11 (14 days) | 2/16/11-3/3/11 (16 days) | 3/4/11-5/18/11 (76 days) |
| Initiation of Land Side Placement - Western Cell Preparation LLDPE Placement | 2/11/11 | 5/24/11 | 2/12/11-2/25/11 (14 days) | 2/26/11-3/13/11 (16 days) | 3/14/11-6/2/11 (72 days) |
| Initiation of Land Side Placement - Armor Cap Placement - Armor Cap B (renamed Armor Cap B/C in 3/3/11 revised Removal Work Plan) | 2/23/11 | 6/02/11 | 2/24/11-3/9/11 (14 days) | 3/10/11-3/25/11 (16 days) | 3/26/11-6/2/11 (69 days) |
| Initiation of Land Side Placement Armor Cap Placement - Armor Cap C1 (renamed Armor Cap C in 3/3/11 revised Removal Work Plan) | 3/22/11 | 6/02/11 | 3/23/11-4/5/11 (14 days) | 4/6/11-4/21/11 (16 days) | 4/22/11-6/2/11 (42 days) |
| Initiation of Land Side Placement - Armor Cap Placement - Armor Cap C2 (renamed Armor Cap C in 3/3/11 revised Removal Work Plan) | 4/6/11 | 6/02/11 | 4/7/11-4/20/11 (14 days) | 4/21/11-5/6/11 (16 days) | 5/7/11-6/2/11 (27 days) |

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| Initiation of Land Side Placement - Armor Cap Placement - Armor Cap A | 5/18/11 | 6/24/11 | 5/19/11-6/1/11 (14 days) | 6/2/11-6/17/11 (16 days) | 6/18/11-6/24/11 (7 days) |
| Initiation of Land Side Placement – Armor Cap Placement – Armor Cap D | 5/23/11 | 7/6/11 | 5/24/11-6/6/11 (14 days) | 6/7/11-6/22/11 (16 days) | 6/23/11-7/6/11 (14 days) |
| Initiation of Armor Cap Placement – Place Geotextile | 2/23/11 | 5/24/11 | 2/24/11-3/9/11 (14 days) | 3/10/11-3/25/11 (16 days) | 3/26/11-5/24/11 (60 days) |
| Final Report (Removal Action Completion Report)** | 9/2/11 | Completed by EPA 5/21/12 | | | |

*Stipulated Penalties Pursuant to Paragraph 77 of the Order

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| <u>Scheduled Task</u> | <u>Scheduled Completion</u> | <u>Actual Completion</u> | <u>\$1,000 Stipulated Penalty per day</u> | <u>\$2,500 Stipulated Penalty per day</u> | <u>\$5,000 Stipulated Penalty per day</u> |
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| Initiation of Materials Delivery - Filter Fabric | 12/27/10 | 2/01/11 | 12/28/11-1/10/11 (14 days) | 1/11/11 – 1/26/11 (16 days) | 1/27/11-2/1/11 (6 days) |
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| Initiation of Water Side Placement Armor Cap B (renamed | 1/24/11 | 3/18/11 | 1/25/11-2/7/11 (14 days) | 2/8/11-2/23/11 (16 days) | 2/24/11-3/18/11 (23 days) |

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| Initiation of Land Side Placement – Armor Cap Placement – Armor Cap D | 5/23/11 | 7/6/11 | 5/24/11-6/6/11 (14 days) | 6/7/11-6/22/11 (16 days) | 6/23/11-7/6/11 (14 days) |
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| Final Report (Removal Action Completion Report)** | 9/2/11 | Completed by EPA 5/21/12 | | | |

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